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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,237	07/09/2001	Paul D. Daly	60426-282; 2000P07905US01	7497
24500	7590	03/31/2006	EXAMINER	
SIEMENS CORPORATION INTELLECTUAL PROPERTY LAW DEPARTMENT 170 WOOD AVENUE SOUTH ISELIN, NJ 08830			CHAU, COREY P	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 03/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/901,237

Applicant(s)

DALY, PAUL D.

Examiner

Corey P. Chau

Art Unit

2644

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 10 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 1-6 and 20-22.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 8-17.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See attached sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
VIVIAN CHIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600

## DETAILED ACTION

### *Response to Arguments*

1. With respect to Applicant's argument on page 8, stating that "Applicant respectfully disagrees that this discloses: two modes of noise attenuation. Rather, there is only one mode of noise attenuation disclosed. As specifically stated in claim 8, there is required, "at least two modes of noise attenuation signal generated by control unit." Fisher, et al discloses only one mode of signal generation, i.e., the changing of an undesirable oscillation to a desirable oscillation. This change is affected by a signal mode of noise attenuation, not by two different modes of noise attenuation. The Examiner mistakenly counts the noise to be changed by the single mode of noise attenuation signal generation as a mode when it is in fact the sound affected by the mode", has been noted. However, the Examiner respectfully disagrees. Fischer discloses changing an undesirable oscillation (i.e. one mode of noise attenuation) into a desirable oscillation (i.e. another mode of noise attenuation) as **a function of the operating condition of the vehicle**. Fischer discloses an apparatus 10 to influence oscillations in a passenger compartment 12 of a motor vehicle 14, comprising: a memory device 38 to store a plurality of predetermined oscillation patterns SM, an operating condition determination device 18 to determine the operating condition BZ of the motor vehicle 14, a selector device 36 to select an oscillation pattern SM from the plurality of stored oscillation patterns SM as a function of the operating condition BZ determined on the motor vehicle 14, and an oscillation generator device 39-42-44 to output oscillations corresponding to the selected oscillation pattern SM into the

Art Unit: 2644

passenger compartment 12 of the motor vehicle 14, where it should also be noted that although the apparatus claimed by the present invention has been described above primarily on the basis of the example of the suppression of primary oscillations P originating from the oscillation source 16, it is also possible not to suppress these primary oscillations P by means of the secondary oscillations S generated from the stored oscillation patterns SM, but to modify them in a controlled and desired manner. For example, consideration could be given to modifying the engine noises P of a compact car by the controlled superimposition of suitable secondary oscillations S, so that in the passenger compartment 12, the impression is given that the small car is actually a sports car, which reads on "a control unit in communication with said speaker, having at least two modes of noise attenuation signal generation". See column 3, line 43 to column 4, line 59; column 9, lines 29-42; column 13, line 25 to column 14, line 8.